IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 346 OF 2003

Alhad R. Vaidya & Ors. ...Petitioners

Versus

Anil B. Sthalkekar & Ors ...Respondents

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Mr. G.S. Godbole, counsel for Petitioners

Mr. Vishal Phal with Mr.M.R. Phal counsel for Respondents 1 and 8.

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CORAM: B. H. MARLAPALLE, J.

DATED: 12TH APRIL, 2005

P. C.:-

1. Heard Mr. Godbole, the learned counsel for the petitioner and Mr. Vishal Phal the learned counsel for respondent Nos. 1 and 8.

2. In writ petition No.2569 of 2002 while granting rule, interim order in terms of prayer clause (f) and (g) was passed by this Court on 20.6.2002. The said clauses read as under:-

> f) Pending the hearing and final disposal of the present petition, the Respondent No.4 society may be

restrained by an order of injunction from in any manner enrolling any new member or in any manner transferring one vacant flat which is available in the building of Respondent No.4 society situated at Plot No. Survey No.161 Part B plot No.1, Juhu Versova Link Road, Andheri (W), Mumbai 400 053;

g) Pending the hearing and final disposal of the present petition, the Respondent Nos. 5 to 8 herein may be restrained by an appropriate order of injunction from in any manner parting with possession or creating any third party rights or interests in respect of or creating any charge over the respective flats in their possession from the building owned by Respondent No.4 society situated at Plot No. Survey No.161 Part B Plot No.1 Juhu Versova Link Road, Andheri (W), Mumbai 400 053.

3. It is alleged by the petitioners that the

respondent No. 1 Anil B. Sthalekar, inducted tenant after the said order was passed by this Court on 20.6.2002 and thus, wilfully acted in breach of the injunction order in terms of prayer clause (g) quoted hereinabove.

4. Mr. Phal, the learned counsel appearing for the respondent Nos. 1 and 8 stated that the respondent No.1 is in employment somewhere and the respondent No.8 is his real brother who was occupied another flat in the same society i.e. Samudra Manthan Co-operative Housing Society Ltd. As the respondent No.1 was not staying at Mumbai on account of his service, he wanted his brother (respondent No.8) to occupy his flat (Flat No.601), a specific permission was obtained from the society on 25.8.2002 to that effect and consequently the respondent No.8 moved into the flat No.601 on 1.9.2002 by letting out his own flat No.103. It is further stated that the respondent No.8 has already vacated the flat No.601 in June, 2003 itself and therefore, from the same date none occupies flat No.601 other than the family members of the respondent No.1 occasionally. It is further pointed out that the writ petition No. 2569 of 2002 came to be dismissed in default on or about 28.2.2003 and this contempt petition has been moved on 8.9.2003. The learned counsel for the respondents, therefore, contended that as on the date

the contempt petition was moved before this Court, the order passed in writ petition No. 2569 of 2002 was not in existence. Mr. Godbole, the learned counsel for the petitioners does not dispute the fact that the writ petition No. 2569 of 2002 was dismissed in default on or about 28.2.2003 but submitted that the same has been restored by order dated 20.7.2004.

5. The act of the respondent No.1 in requesting the respondent No.8 to occupy his flat as a tenant for few months that too with the permission of the respondent society, would not, prima facie, amount to wilful violation of the interim injunction in terms of prayer clause (g) though it may amount to in some manner parting with the possession. The induction of respondent No.8 was with the permission of the society and in any case he has vacated the premises in June, 2003 itself and as on the date of filing of this contempt petition, the flat was not in the possession of the respondent No.8.

6. Under the circumstances, there is no prima facie, case to take cognizance of the alleged contempt as at present and hence, the contempt petition is hereby rejected.

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